

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

76-1491

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1491

UNITED STATES OF AMERICA,

Appellee,

—v.—

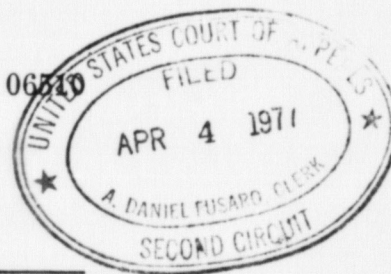
FRANK AMENDOLA,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

GOVERNMENT'S APPENDIX

PETER C. DORSEY,
*United States Attorney for the
District of Connecticut,*
270 Orange Street,
New Haven, Connecticut 06510



PAGINATION AS IN ORIGINAL COPY

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A 1
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Appendix I

APPLICATION OF THE UNITED STATES OF :
AMERICA IN THE MATTER OF AN ORDER :
AUTHORIZING THE INTERCEPTION OF :
WIRE COMMUNICATIONS :

ORDER

AUTHORIZING INTERCEPTION OF WIRE COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by Paul E. Coffey, Special Attorney, United States Department of Justice, and an "investigative or law enforcement officer," as defined in Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

(a) there is probable cause to believe that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, have committed and are committing offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business by five or more persons in violation of Connecticut General Statute 865 (1971) which have been or remain

in substantially continuous operation for a period in excess of 30 days or has a gross REVENUE of \$2,000 in any single day, thereby in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit the above enumerated offense in violation of Title 18, United States Code, Section 371,

(b) there is probable cause to believe that particular wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furrar; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular, these wire communications will concern the receipt and transmission of policy betting and settling up of bets by Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown.

(c) normal investigative procedures reasonably appear to be unlikely to succeed if tried.

(d) there is probable cause to believe that the telephone subscribed to by Daniel Valeriano,

A 3

located at 58 Dixwell Avenue, New Haven, Connecticut, carrying telephone number 203-624-8802, and the telephone subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, and carrying telephone number 203-865-5288 have been and are being used by Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, in connection with the commission of the above-described offense.

Wherefore, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized, pursuant to application authorized by the Attorney General of the United States Department of Justice, the Honorable RICHARD C. KLEINDIENST, under the power conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(1) intercept wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning the above-described offenses to and from the telephone subscribed to by Daniel Valeriano, located at 58 Dixwell Avenue, New Haven, Connecticut, bearing the telephone number 203-624-8802, and the telephone subscribed to

by Catherine Jones, 30 Park Lane, Apartment 404,
Harden, Connecticut, bearing telephone number
203-866-1238.

(2) such interception shall not automatically
terminate when the type of communication described
above in paragraph "B" has first been obtained,
but shall continue until communications are inter-
cepted which reveal the names in which Daniel
Valeriano, also known as "Hack"; Charles Farnan;
Frank Farn; Catherine Brown, also known as
Catherine Jones; an individual known only as
"Arlis"; and others as yet unknown, participate
in the conducting of an illegal gambling business,
in violation of Title 18, United States Code,
Sections 1961 and 1962, which reveal the
identities of the participants, their places
of residence, and the nature of the
business in which they are engaged.
of fifteen days after the date of this Order,
which shall be as follows:

Providing that the interception to intercept wire
communications shall be conducted in accordance with the
provisions of this Order and shall be conducted in such a way
as to elude the detection of the subject, as not otherwise
permitted by the provisions of Title 18, United
States Code, and shall be conducted in accordance with the authorized
objective of the interception, as set forth in (B) above.
From the date of this Order.

-5-

Providing also that, PAUL E. COFFEY shall provide the court with a written report on or about the fifth and tenth days following the date of this Order or as often as the court may require showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

It is further ordered upon request of applicant that the Southern New England Telephone Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by Southern New England Telephone Company to be compensated for by the applicant at the prevailing rates.

DATE: _____

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

In Re: Application of the United
States of America for an Order
Authorizing the Use of a Pen
Register

ORDER

AUTHORIZING USE OF A PEN REGISTER

TO: Special Agents of the Federal Bureau of Investigation
United States Department of Justice

Affidavit having been made before me by Raymond A. Connolly,
Special Agent of the Federal Bureau of Investigation, United
States Department of Justice, and full consideration having been
given to the matters set forth therein the Court finds:

(a) there is probable cause to believe that an individual known
only as "Alfie", Daniel Valeriano, Michael J. Celentano, and others
as yet unknown have committed, are committing, and will continue to
commit offenses involving the operation of an illegal gambling business
involving five or more persons and in substantially continuous operation
for thirty (30) days and having a gross daily revenue in any one day
of \$2,000.00 in violation of Connecticut General Statute, and thus
in violation of Section 1955, Title 18, U.S.C. and are conspiring to
commit such offenses in violation of Section 371 of Title 18, United
States Code.

(b) there is probable cause for belief that telephones numbered
203-248-2088, subscribed to by Mrs. Marie Amendola, at the premises
719 Still Hill Road, Hamden, Connecticut and telephone numbered 203-
469-0904 subscribed to by Michael J. Celentano, 3 Roosevelt Street,
New Haven, have been used, are being used, and will be used in carrying
out the offenses detailed in (a) above.

WHEREFORE, it is hereby ordered that Special Agents of the
Federal Bureau of Investigation, United States Department of Justice,
are authorized to:

(a) install mechanical devices on the telephone subscribed to in
the name of Mrs. Marie Amendola, at the premises 719 Still Hill Road,
Hamden, Connecticut, and carrying telephone number 203-248-2088 and

telephone numbered 203-469-0904 subscribed to by Michael J. Celentano,
3 Roosevelt Street, New Haven.

(b) only such mechanical devices as will reveal the telephone numbers of all outgoing calls dialed from the above-described telephone, which will enable Special Agents of the Federal Bureau of Investigation to determine the location and identities of confederates, accomplices, and associates of Daniel Valeriano, "Alfie" and Michael J. Celentano in the illegal schemes aforesaid.

(c) such mechanical devices shall continue in operation for a period of fifteen (15) days from the date of this Order.

PROVIDED THAT, this authorization to install and operate the above-described mechanical device must terminate at the end of fifteen (15) days from the date of this Order.

J. L. [Signature]
JUDGE

May 22 1973
DATE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES OF AMERICA :
FOR AN ORDER AUTHORIZING THE :
USE OF A PEN REGISTER DEVICE :

A F F I D A V I T

I, Raymond A. Connolly, having been employed as a Special Agent of the Federal Bureau of Investigation, United States Department of Justice, for 26 years, being duly sworn, deposes and states:

I have personally conducted the investigation of this offense, and because of my personal participation in this investigation and of reports made to me by other Agents of the Federal Bureau of Investigation, I am familiar with all the circumstances of the offenses. Based on this familiarity, I allege the facts contained in the paragraphs below to show that:

There is probable cause to believe that telephone number 203-248-2088, subscribed to by Maria Amendola, 719 Still Hill Road, Hamden, Connecticut, and telephone number 203-469-0904, subscribed to by Michael J. Celentano, 3 Roosevelt Street, New Haven, Connecticut, have been and are being and will be used to carry out the offenses detailed above, all of which appear more fully hereinafter.

On January 15, 1973, the Honorable Thomas F. Murphy, United States District Judge for the District of Connecticut, issued an Ex Parte Order, pursuant to the provisions of Section 2518 of Title 18, United States Code, authorizing Special Agents

- 2 -

of the Federal Bureau of Investigation, United States Department of Justice, to intercept particularly described wire communications of Daniel Valeriano and others which related to . conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business in violation of Section 1955 of Title 18, United States Code.

Pursuant to that Ex Parte Order of authorization, interceptions commenced at telephone number 203-624-8802, subscribed to by Daniel Valeriano, 58 Dixwell Avenue, New Haven, Connecticut, at 8:31 a.m., January 17, 1973, and terminated at 10:00 p.m. on January 27, 1973. Also under this order, interceptions commenced at telephone number 203-865-5288, subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, at 8:50 a.m., January 17, 1973, and terminated at 10:00 p.m. on January 27, 1973.

Analysis of intercepted telephone calls from telephone number 203-865-5288 reflects that Charles Furman, with the assistance of Catherine Jones, operate a numbers book over this phone. Furman received numbers policy bets from individuals identified as Frank, BN, Blue, Cliff, Dave and Shirley. Furman repeated the numbers bets received from the above runners to Alfie.

Analysis of the above telephone calls reflects that Charles Furman operates a policy numbers "book" for Daniel Valeriano. Alfie acts as the "controller" of Furman's "book", and reports to Daniel Valeriano the results of this book operation.

- 3 -

The intercepted communications reflected that the "books" settle up weekly after the completion of Saturdays bets. Daniel Valeriano has telephonically contacted Alfie at telephone number 203-248-2088 and they discussed the totals for individual policy number writers as well as "hits" and weekly totals.

The intercepted communications from the above phones reflect that "Alfie" and "Mike", at telephone numbers 203-248-2088 and 203-469-0904 respectively, act as "controllers" in this numbers policy operation.

On January 20, 1973, at 7:06 p.m., Daniel Valeriano, calling from telephone number 203-624-8802, contacted "Alfie" at telephone number 203-248-2088, and the following is a portion of the conversation that took place at this time:

Alfie:	What you, what you get, 4696
Dan:	Yeah, okay now, for the week I get 62964, let me see, 12566 the other way without the change would come out ah 4698
Alfie:	In other words, like ah, whatever you know
Dan:	Oh, okay, let's go
Alfie:	X 1077
Dan:	1077
Alfie:	808
Dan:	808
Alfie:	Blue 854
Dan:	854
Alfie:	641
Dan:	641
Alfie:	Frank 1662
Dan:	1662

- 4 -

Alfie:	1246
Dan:	1246
Alfie:	SM 467
Dan:	467
Alfie:	350
Dan:	350
Alfie:	PP 809
Dan:	809
Alfie:	607
Dan:	607
Alfie:	(inaudible) had nothing
Dan:	(inaudible)
Alfie:	Monday I'll call you know
Dan:	I'll call him tomorrow, alright
Alfie:	Red 207
Dan:	Red 207
Alfie:	155
Dan:	155
Alfie:	Shirley 247
Dan:	247
Alfie:	185
Dan:	185
Alfie:	Adam 707
Dan:	707
Alfie:	530
Dan:	530
Alfie:	Bruce 80
Dan:	80
Alfie:	60
Dan:	60. Yep

- 5 -

Alfie: Ed 87
 Dan: 87
 Alfie: 65
 Dan: 65
 Alfie: Dave 58
 Dan: Dave 58
 Alfie: 44
 Dan: 44, okay, might as well (inaudible)

On January 27, 1973, at 8:41 p.m., Daniel Valeriano, calling from telephone number 203-624-8802, contacted Mike at telephone number 203-469-0904, and the following is a portion of the conversation that took place:

Mike: Sure, I don't blame you
 Dan: I'm not going to give him money. I told him I said I gotta see it all you know. I got money coming from this end but I'm not going to give it to him cause that's the money I'm suppose to collect (inaudible)
 Mike: (inaudible) like 22
 Dan: Right, so, so that 23 you give me but I still got to have the 5,000 you know plus ah I got (inaudible)
 Mike: (inaudible) this week
 Dan: Yeah, you told me 1202
 Mike: 1202 yeah

(Emphasis supplied)

On January 27, 1973, at 8:52 p.m., Daniel Valeriano received an incoming call on telephone number 203-624-8802, from "Alfie". The following is a portion of the telephone conversation that took place.

Alfie: Right, I get 5997
 Dan: 5, oh for pay off

- 6 -

Alfie: Right, right 5997
Dan: Oh, wait a minute 303, 5997, right 5997 (inaudible)

Daniel Valeriano, from telephone number 203-624-8802, contacted "Alfie" at telephone number 203-248-2088 on January 22, 24, 25 and 26, 1973, during which conversations Valeriano and "Alfie" discussed the numbers policy operation.

Telephone number 203-248-2088 is subscribed to by Maria Amendola, 719 Still Hill Road, Hamden, Connecticut, and telephone number 203-469-0904 is subscribed to by Michael J. Celentano, 3 Roosevelt Street, New Haven, Connecticut.

The records of the East Haven, Connecticut Police Department reflect that Michael J. Celentano, born December 5, 1931, at New Haven, Connecticut, was arrested on December 8, 1958 on a charge of Pool Selling. This record further reflected that Michael J. Celentano was found guilty of policy playing on December 20, 1958 and fined \$100.00.

Confidential informant number 1 furnished the following information on March 26, 1973 to Sergeant Vincent De Rosa, New Haven Police Department, who in turn furnished this information to Special Agent Raymond A. Connolly on the same date.

Informant number 1 advised that he had conversations with Daniel Valeriano on March 21, 22 and 23, 1973, and during these conversations, Valeriano stated that he continues to operate a numbers policy operation from his residence, 58 Dixwell Avenue, New Haven, Connecticut, during the morning hours and then travels to Waterbury, Connecticut, where he operates a numbers policy operation during the afternoon hours.

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Informant number 1 furnished the following information to Sergeant Vincent De Rosa, New Haven Police Department, on April 16, 1973, who furnished this information to the affiant on the same date. Informant number 1 advised that Daniel Valeriano told him on April 10, 1973 that he, Daniel Valeriano, continues to use his residence, 58 Dixwell Avenue, New Haven, Connecticut, to operate a numbers policy operation during the morning hours. Daniel Valeriano also told informant number 1 at this time that he goes to the same location in Waterbury, Connecticut, that he has been using for an extended period of time and controls his numbers policy operation from this location in the afternoon hours 6 days a week excluding Sundays. Daniel Valeriano also told informant number 1 at this time that his numbers operation has not changed and the same individuals are involved.

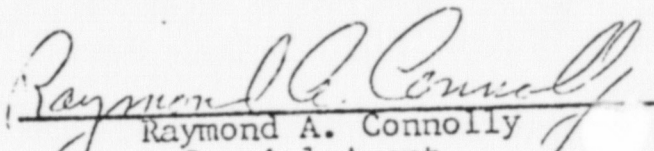
Informant number 1 advised that Daniel Valeriano told him at this time that he, the informant, should continue to furnish to "Alfie" the numbers action taken each day. Daniel Valeriano also said at this time that he, Valeriano, would contact him telephonically each weekday from Waterbury, Connecticut, and furnish him with the first, second and third policy number for the day.

Informant number 1 advised on April 16, 1973 that Daniel Valeriano telephonically contacted him daily during the week of April 9-14, 1973 and furnished him the policy numbers for each day.

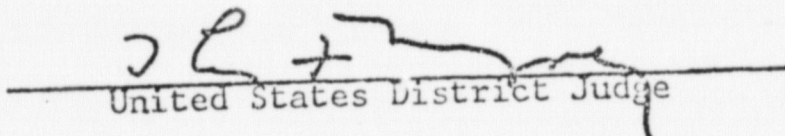
Informant number 1 advised on April 16, 1973 that "Alfie" telephonically contacted him each day between April 9-14, 1973 at approximately 2:00 p.m. and on these occasions, informant number 1 furnished "Alfie" with the policy wagers for each day.

- 8 -

Informant number 1 said he is of the opinion that "Alfie" has been operating from the same phone for an extended period of time. Informant said that on all calls received from "Alfie", there was no background noise and informant advised that this indicated to him that "Alfie" was calling from a residence phone rather than a public phone.


Raymond A. Connolly
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me
this 22 day of May, 1973
at Wethersfield, Connecticut


United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES FOR AN ORDER
AUTHORIZING THE USE OF A PEN
REGISTER

RE: Pen Register Device Over
Telephone Number 203-469-0904
and 203-248-2088

On Tuesday, May 22, 1973, the Honorable THOMAS F. MURPHY, U. S. District Judge, authorized the installation of a Pen Register device on telephone numbers 203-248-2088 subscribed to by Mrs. MARIE AMENDOLA, at the premises of 719 Still Hill Road, Hamden, Connecticut, and 203-469-0904 subscribed to by MICHAEL J. CELENTANO, 3 Roosevelt Street, New Haven, Connecticut.

On May 23, 1973, the undersigned coordinated technical efforts to implement the aforementioned order, including contact with officials of the Southern New England Telephone Company.

On Thursday, May 24, 1973, the Pen Register devices were activated for the above two telephones. The following information concerning the period of time these devices were operable and a resume of information obtained is set out:

<u>Telephone No.</u>	<u>Date</u>	<u>Activated</u>	<u>Deactivated</u>
469-0904	May 24, 1973	8:40 am	8:50 pm
248-2088	May 24, 1973	8:32 am	8:30 pm
469-0904	May 25, 1973	8:51 am	8:27 pm
248-2088	May 25, 1973	8:51 am	8:27 pm
469-0904	May 26, 1973	9:08 am	8:20 pm
248-2088	May 26, 1973	9:08 am	8:15 pm
469-0904	May 27, 1973	9:00 am	7:45 pm
248-2088	May 27, 1973	9:00 am	7:45 pm
469-0904	May 28, 1973	9:20 am	9:00 pm
248-2088	May 28, 1973	9:20 am	9:00 pm
469-0904	May 29, 1973	9:04 am	8:30 pm
248-2088	May 29, 1973	9:04 am	8:30 pm

- 2 -

<u>Telephone No.</u>	<u>Date</u>	<u>Activated</u>	<u>Deactivated</u>
469-0904	May 30, 1973	9:27 am	8:30 pm
248-2088	May 30, 1973	9:29 am	8:30 pm
469-0904	May 31, 1973	10:20 am	7:24 pm
248-2088	May 31, 1973	10:05 am	7:53 pm
469-0904	June 1, 1973	9:12 am	3:40 pm
248-2088	June 1, 1973	8:53 am	3:40 pm

A review of telephone calls placed from telephone number 248-2088 during the period May 24, 1973 to June 1, 1973, reflects 19 telephone calls to telephone number 239-7581; 16 telephone calls to telephone number 624-8802; 38 telephone calls to telephone number 469-0258; 9 telephone calls to telephone number 624-3814; 16 telephone calls to telephone number 776-7281; 37 telephone calls to telephone number 865-9870; 3 telephone calls to telephone number 776-2081; 19 telephone call to telephone number 737-3659, and numerous telephone calls to other individuals. Several of the above have been identified as having extensive gambling convictions in local courts.

A review of telephone calls placed from telephone number 469-0904 reflects 6 telephone calls to telephone number 248-2088; 7 telephone calls to telephone number 239-7581; 7 telephone calls to telephone number 469-0258; and numerous other telephone calls to other individuals. A review of these calls reflects contact between several of the same individuals contacted from telephone number 248-2088.

Raymond A. Conolly
 Raymond A. Conolly
 Special Agent, Federal Bureau of
 Investigation

Subscribed and Sworn to on the 6th day of January, 1973
 At Wallingford, Connecticut (year)

[Signature]
 District Judge

United States Department of Justice

Appendix V

IN REPLY REFER TO PEC:pam

UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT
450 MAIN STREET
HARTFORD, CONNECTICUT 06103

July 10, 1973

REGISTERED MAIL
RETURN RECEIPT REQUESTED

To: Daniel Valeriano
58 Dixwell Avenue
New Haven, Conn.

Catherine Jones
30 Park Lane
Apt. 404
Hamden, Conn.

Frank Gunn
47 Dix Street
West Haven, Conn.

Charles Furman
30 Park Lane
Apt. 404
Hamden, Conn.

Michael J. Celentano
3 Roosevelt Street
New Haven, Conn.

Re: Application of the United States of America in the
Matter of an Order Authorizing the Interception of
Wire Communications

Inventory

Please be advised that on January 15, 1973 the Honorable Thomas F. Murphy, United States District Judge for the District of Connecticut, signed an Order authorizing the interception of wire communications, which Order authorized said interceptions for a fifteen-day period.

During the period between January 17, 1973 and January 27, 1973 certain wire communications made by you over telephone numbers 203-865-5288 and 203-624-8802 were intercepted by agents of the United States of America, acting pursuant to said Court Order. The violations specified in the above Order were Title 18, United States Code, Sections 1955 and 371.

Very truly yours,

Paul E. Coffey
Paul E. Coffey
Special Attorney in Charge
Organized Crime Field Office
Hartford, Connecticut

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE APPLICATION OF THE
UNITED STATES OF AMERICA
IN THE MATTER OF AN ORDER
AUTHORIZING THE INTERCEPTION
OF WIRE COMMUNICATIONS

:
:
:
:
:

ORDER

IT is hereby ORDERED, ADJUDGED and DECREED that on or before July 16, 1973 Paul E. Coffey, Special Attorney, United States Department of Justice, shall cause the service of inventory required by Title 18, United States Code, Section 2518(8)(d), to be made upon

Daniel Valeriano
58 Dixwell Avenue
New Haven, Conn.

Charles Furman
30 Park Lane
Apt. 404
Hamden, Conn.

Michael J. Celentano
3 Roosevelt Street
New Haven, Conn.

Catherine Jones
30 Park Lane
Apt. 404
Hamden, Conn.

Frank Gunn
47 Dix Street
West Haven, Conn.

by depositing copies of said inventory, postage prepaid, in the United States Mail, Registered Mail, Return Receipt Requested, and directed to each of the aforesaid persons at his or her current address.

It is further ORDERED, ADJUDGED and DECREED that Paul E. Coffey shall file the original of said inventory with the Court on July 16, 1973 and that he shall file on or about August 16, 1973 all of the Return Receipt Requests relating to each recipient of notice.

M. Joseph Blumenthal
UNITED STATES DISTRICT JUDGE

Dated at Hartford, Connecticut

this 10th day of July, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X

THE UNITED STATES OF AMERICA :

VS. :

Amendola :

Criminal Action

No. N74-48

-----X

Before the Hon. Robert C. Zampano
United States District Judge
New Haven, Connecticut

September 14, 1976

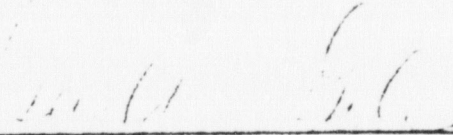
For The Government:

H. James Pickerstein, Esq.
Assistant United States Attorney
New Haven, Connecticut

For The Defendant:

Roger Frechette, Esq.,
215 Church Street
New Haven, Connecticut

This is to certify that the
within pages is a true and
accurate transcript



Official Reporter

1 THE COURT: U.S. versus Amendola.

2 MR. PICKERSTEIN: Government ready.

3 MR. FRECHETTE: Ready.

4 THE COURT: Time?

5 MR. FRECHETTE: I suppose the same as before.

6 * * *

7 THE COURT: I am going to pick a jury ;in U.S. versus

8 Torello, pick a jury in U.S. versus O'Neill and

9 pick a jury in U.S. Versus Chapman.

10 The lineup will be as follows:

11 Torello will go forward tomorrow morning, and we will

12 assume it will go through the week. That will be

13 followed by U.S. versus O'Neill on Tuesday, to be

14 followed by U.S. versus Chapman at the conclusion of

15 the O'Neill case.

16 Now, in the meantime, Mr. Hartmere and Mr. Bowman

17 certainly should be able to have the lineup that they

18 requested; notify me when they are ready to present

19 their motion to suppress, if any, and I can handle

20 the preliminary matters, and if they are resolved

21 against the defendant we can go forward , having picked

22 the jury.

23 Torello will go forward tomorrow morning but we

24 will pick a jury this morning; O'Neill will go to

25 trial tomorrow, and we will pick a jury this morning;

1 Chapman will go to trial after O'Neill, and after I
2 handle the motion to suppress, but we will pick a
3 jury this morning.

4 That will be followed by U.S. versus Amendola, but I
5 will not pick a jury this morning. I think it would
6 be too much to pick four juries.

7 MR. FRECHETTE: May I have your Honor's permission to
8 represent to the State that you are holding me?

9 THE COURT: I am not holding you.

10 MR. FRECHETTE: If I could start, is that o.k.?

11 THE COURT: If you have business in State Court, go
12 ahead and start disposing of it. We will give you
13 some warning, because I am going to set Amendola down
14 with Marena and Apuzzo, and that won't be done
15 for a couple of weeks. So I will be in touch with
16 counsel and we will work it out.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

RECEIVED

NOV 3 1976

U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

-----X
UNITED STATES OF AMERICA :

VERSUS :

Criminal No. N 74-48

AMENDOLA :

-----X

New Haven, Connecticut
October 20, 1976

B E F O R E :

HON. ROBERT C. ZAMPANO, USDJ

A P P E A R A N C E S :

FOR THE GOVERNMENT:

PETER CASEY, ESQUIRE
Assistant United States Attorney
Hartford, Connecticut

FOR THE DEFENDANT:

ROGER FRECHETTE, ESQUIRE
215 Church Street
New Haven, Connecticut

1 THE COURT: Now we come to U.S. versus
2 Amendola, N 74-48. Is there anything further on the
3 Motion to Dismiss?

4 MR. CASEY: I wanted to point out for the
5 record, I worked quite late last night and I have pre-
6 pared a response which I hope is being typed today so
7 it should be to Mr. Frechette and to the Court within
8 the next couple of days.

9 THE COURT: Very well.

10 MR. FRECHETTE: In support of my Motion to
11 Dismiss, your Honor, may I respectfully draw your
12 Honor's attention to the Diddier case at page 84.

13 If I may quote it briefly to highlight that,
14 in which this October 13th, 1976 case states, "Further
15 delay was also prohibited by the promulgation of the
16 revised Southern District plan for the prompt
17 disposition of criminal cases which became effective
18 September 29th, 1975."

19 I would draw your Honor's attention that
20 the Second Circuit has, as I read that, put on us
21 notice that our plan, which was effective July 1st,
22 1976, would control this case, and further in response
23 to your Honor's comment that the prior 90-day rule would
24 be in effect, may I draw to your Honor's attention the
25 last sentence of paragraph 2 of the first page of the

1 plan which states, "While we are adopting the 1979 time
2 limits effective July 1st, 1976, none of the sanction
3 encompassed in 18 USC Section 3162 will become effective
4 until July 1st, 1979, the deadline mandated by Congress."

5 THE COURT: How does that differ from what I
6 said?

7 MR. FRECHETTE: There is no sanction,
8 respectfully. I put this in my brief yesterday in
9 3162, that applies in any way to E. It's silent.
10 Sanction in 3162 has nothing to do with the case in
11 question. They only apply to A and B.

12 THE COURT: The administrative office of the
13 United States has issued a bulletin saying that it does
14 apply, the sanctions do apply to E section of the Act.

15 MR. FRECHETTE: Then it's my claim that --
16 and I don't want to necessarily argue this with your
17 Honor -- I want to make the claim that if Diddier doesn't
18 say that plan is effective, that's all I can say.

19 THE COURT: Very well.

20 MR. CASEY: May I make one comment. Of
21 course, I do have the brief coming in so I will be very
22 short. I just wanted to comment one point on the
23 Diddier case. That is that not only in that case
24 was the delay that was occasioned 28 months but also
25 the Court found, and I believe it's referenced on the

1 last page of the opinion, that much of the delay was
2 attributable to a deliberate attempted effort on the
3 part of the Government to gain a tactical advantage.

4 This was one of the reasons why the Court
5 dealt harshly in Diddier and I don't think that situation
6 exists in this case.

7 MR. FRECHETTE: Further the Diddier --

8 THE COURT: We can go on and on and on with
9 this. The Court is satisfied. I may put more comments
10 on the record later but as of right now the Court is
11 satisfied that the Motion to Dismiss must be denied.
12 First because it seems crystal clear in my mind that
13 it's the 90-day rule that controls and that our 60-day
14 rule does not come into effect or have sanctions until
15 later on in 1979 but even aside from that it seems to
16 me that Diddier and the principle enunciated in there,
17 in that case, and its reliance on such cases as Romer,
18 Drummond clearly support the denial of the Motion to
19 Dismiss in this case. This case had its mistrial
20 declared official sometime this summer. I set it down
21 for September 14th. At that time I went through the
22 entire list of cases set down. I set this one down
23 fourth. I could have very easily that day declared the
24 Amendola case on trial and just continued it until today
25 but I didn't do it out of my -- if my recollection is

1 correct, Mr. Frechette said he had some state business--

2 MR. FRECHETTE: No, your Honor.

3 THE COURT: He wanted to know if I would
4 hold him and I said I wouldn't do that

5 MR. FRECHETTE: It's not correct.

6 THE COURT: It makes no difference.

7 MR. FRECHETTE: I didn't say that.

8 THE COURT: What we will do from now on,
9 particularly with Mr. Frechette's cases, is just put
10 them on trial and avoid this type of problem when a
11 week or two goes by because of other business the Court
12 has. I'm sure there are other reasons in Mr. Casey's
13 brief that will support the denial of the Motion to
14 Dismiss.

15 For all those reasons, the Motion to Dismiss
16 is denied. We will proceed to select a jury in the
17 Amendola case at this time.

18 MR. FRECHETTE: I want to file a Motion to
19 Dismiss on double jeopardy.

20 THE COURT: Motion denied.

21 MR. FRECHETTE: May I have a moment to hand
22 a copy to Mr. Casey?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X
:
UNITED STATES OF AMERICA,
:
vs.
:
DANIEL VALERIANO, et al.,
:
Defendants.
:
-----X

Criminal N-74-48

July 29, 1976
New Haven, Connecticut

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

And a Jury of Twelve

A p p e a r a n c e s:

PETER CASEY, Esq.
Assistant U. S. Attorney
Hartford, Connecticut

For the Defendants:

ANTHONY J. LASALA, Esq.
33 Whitney Avenue
New Haven, Connecticut

ROGER J. FRENCHETTE, Esq.
215 Church Street
New Haven, Connecticut

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U.S. DISTRICT COURT
NEW HAVEN, CONNECTICUT

A 29

Cross - direct

Government Exhibit 18, Q-3.

A Yes, that's correct. Government Exhibit 19, Q-3 is a 1972 spiral type calendar book containing notations of amounts with designations which are the same designations that were mentioned in the telephone conversations that we heard in the courtroom between an individual identified as Ellsworth Bell: that is, the accounts 1, 2, 3, 4, 6 and PC in the front. These are dated between January -- there are various weeks. January 20 to 27, no year given in that one. Here's one with the complete date, 4/16/73, containing those same accounts, 4, 3, 6, 1, PC and 2 in the front, and in the back are accounts with the designations of X, Blue, PP, Frank, Red, BM, which are the same account designations that we heard in the telephone calls played in court with the accounts which, in my opinion, were the accounts being handled by a controller identified as Frank Amendola.

MR. LASALA: What date? I'm sorry, your Honor.

THE WITNESS: I don't see any specific dates. The dates were in the front, '73. February 27 to March 3rd, without a year. March 12 to the 17th, again without a year. I don't find any specific years other than the '73 in the front part of

Q Agent Cross, showing you what has been marked for identification as Government Exhibits 57, 58, 59, 60 and 61, without telling us the information, the specific information

1 Cross - cross

2 recall any -- I think that's correct, yes.

3 Q Now, insofar as --

4 A -- I used other than this.

5 Q -- Q-2, let's stick to Q-2 for a moment.

6 A That's what I mean. In Q-2, I used other designations.

7 Q Q-2, Agent Harker has down one five by eight and a
8 quarter black notebook bearing the year 1972, and also bearing
9 handwritten notations beginning on the top of the seventh page,
10 January 1st to January 6th. Now, as you have told us, that's
11 simply identification, is that correct?

12 A That's correct.

13 Q Does Agent Harker mention anything about the names:
14 Red, Frank, and X?

15 A No, sir.

16 Q Yet, you felt, in at least describing Q-2, the names:
17 Red, Frank and X were significant on that, is that correct?

18 A That's correct.

19 Q Could you tell us why you felt they were significant?

20 A Because those are designations that were contained in
21 the telephone calls which we heard in the courtroom, calls wherein
22 account balances were being discussed by, among others -- I am
23 recalling -- Mr. Amendola and Mr. Valeriano, and those were the
24 specific names and designations for the accounts being used
25 between those two, that's why I felt they were significant.

Cross - cross/redirect

a fair --

MR. FRECHETTE: I think --

THE COURT: What if he says yes and starts saying things that -- I will sustain the objection more to protect -- I will sustain the objection. That's for summation, not for the witness to summarize the government's case.

Q I take it, because of your answer, that the first time you got into this was three weeks ago, that you never came up to New Haven before and took a physical look at any of the layouts as far as the addresses that we have been talking about, have you?

A No, sir, I haven't.

MR. FRECHETTE: That's all. Thank you.

REDIRECT EXAMINATION

BY MR. CASEY:

Q Agent Cross, was Agent Barker originally scheduled to come up here for this trial?

A Yes, sir, he was.

Q Did you replace him?

A I did.

Q Do you know why you replaced him?

A Because he had another trial going in New York City and I had to take two of his trials, and then this was the one that ended up going to trial. It's a common procedure that we have

Appendix IX

A 32

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FEB 24 1976

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

UNITED STATES OF AMERICA :

v. :

CRIMINAL NO. N-74-48

DANIEL VALERIANO, CHARLES FURMAN, :
CATHERINE BROWN, a/k/a Catherine :
Jones, CLIFTON ADAMS, ELLSWORTH :
BELL, FRANK KINSLER, FRANK AMENDOLA, :
a/k/a "Alfie" :

FILED
FEB 19 9 37 AM '76
U. S. DISTRICT COURT
NEW HAVEN, CONN.

MEMORANDUM OF DECISION

In this two-count indictment filed on May 3, 1974, the seven defendants are charged with violating and with conspiring to violate the federal gambling statutes, 18 U.S.C. §§ 1955 and 371. As is typical in § 1955 cases, the defendants level broad constitutional and statutory attacks against the indictment and wiretap evidence obtained under the provisions of Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510-2520. In addition, defendant Brown moves to suppress her grand jury testimony, and defendant Bell challenges the search of his home by agents in July, 1973. Finally, the defendants have filed various motions for discovery.

I. The Motions To Dismiss

A. Most of the arguments advanced by the defendants in support of their motions to dismiss are foreclosed by Judge Blumenthal's reasoned opinion in United States v. Chianello, 366 F. Supp. 853 (D. Conn.), aff'd, ____ F.2d

_____ (2 Cir. November 11, 1975). Thus, § 1955 is constitutional; the doctrine of pardon and abatement does not bar the prosecution; and, there is no infirmity in the conspiracy count of the indictment based on an application of "Wharton's Rule." Id. at 862-863; see also United States v. Sacco, 491 F.2d 995 (9 Cir. 1974); United States v. Becker, 451 F.2d 230 (2 Cir. 1972), vacated on other grounds, 417 U.S. 903 (1974); State v. Genova, 141 Conn. 565 (1954). Further, since the indictment alleges that the defendants committed certain acts with respect to an illegal gambling business "involving a numbers or policy operation" during a specific period, the use of the term "bookmaking" does not render the indictment vague or legally insufficient. Cf. United States v. DeCesaro, 54 F.R.D. 596, 597 (E.D.Wis. 1972). The indictment contains the requisite specificity to enable the defendants to prepare their defenses and to avoid the danger of being prosecuted again for the same conduct. United States v. Debrow, 346 U.S. 374 (1953).

B. As a further ground for dismissal, the defendant Kinsler severely criticizes the role of a prosecutor in presenting evidence to a grand jury and suggests that the Magistrate's duties be expanded to include that "of the court's attorney before the grand jury." The defendant's arguments are conclusory in nature, have little or no relevance to the case at bar, and are contrary to controlling

law. The government attorney is specifically authorized to appear before a grand jury, Rule 6(d), F. R. Crim. P., and his presence is recognized as essential "to the fact presentation process by which the grand jury reaches its ultimate decision." United States v. Cooper, 464 F.2d 648, 653, (10 Cir. 1972). Moreover, "[a] grand jury proceeding is not an adversary hearing in which the guilt or innocence of the accused is adjudicated," United States v. Calandra, 414 U.S. 332, 343 (1974); therefore, there is no requirement that the prosecutor submit to the grand jury all of the evidence in the government's file. Lorraine v. United States, 396 F.2d 335, 339 (9 Cir.), cert. denied, 393 U.S. 933 (1968); Addonizio v. United States, 313 F. Supp. 486, 495 (D.N.J. 1970), aff'd 451 F.2d 49 (3 Cir.), cert. denied, 405 U.S. 936 (1972).

C. Defendants Brown, Adams, and Furman contend that the indictment must be dismissed as against them because there has been an alleged violation of a policy statement issued by the Department of Justice in 1959 which states: "After a state prosecution there should be no federal trial for the same act or acts unless the reasons are compelling." The short answer to this contention is that there has been no duplication of prosecution here. While it is true that each of the defendants was prosecuted and convicted of "policy playing" on a single day under Connecticut law, Conn. Gen. Stat. § 53-292, the federal statute with which we are concerned prohibits an illegal gambling business of

major proportions involving five or more persons, and one in substantially continuous operation for at least 30 days or with a gross reserve of \$2,000 in any single day. Cf. United States v. Ceraso, 467 F.2d 553, 658 (3 Cir. 1972).

Also, the penalties under state and federal law significantly differ: the state statute provides for a maximum of six months imprisonment or \$100 fine, or both, while the federal enactment carries a maximum of five years incarceration or \$20,000 fine, or both.

In any event, even assuming there has been a breach of a policy set some years ago by the Justice Department, the defendants point to no statute, rule or regulation that has been breached. As Justice Brennan noted in Petite v. United States, 361 U.S. 529, 533, "the government has reserved the right to apply or not to apply its 'policy' in its discretion."

II. The Motions To Suppress

A. All of the defendants move to suppress the wiretap evidence secured by agents of the Federal Bureau of Investigation. They first allege that the affidavit submitted by Agent Connolly in support of the wiretap application was deficient in that (1) the reliability of the informants was not sufficiently established on the face of the affidavit, and (2) the information set forth was "double hearsay" because it was relayed to Agent Connolly through other law enforcement officers.

It is well established that a magistrate cannot issue

a valid search warrant based on an affidavit which contains information supplied to the police by an unidentified informant unless the affidavit states "some of the underlying circumstances from which the officer concluded that the informant . . . was credible or his information reliable." Aguilar v. Texas, 378 U.S. 108, 114 (1964). See also Spinelli v. United States, 393 U.S. 410 (1969); United States v. Canestri, 518 F.2d 269 (2 Cir. 1975). In the instant case, the affidavit recites that the "information provided by Informant Number One has been substantiated and found on each occasion to be accurate and reliable", that Informant Number Two "has provided reliable information in the past to Sergeant DeRosa, which information has resulted in three arrests and convictions in gambling matters", and that Informant Number Three "in the past has provided reliable information which has been confirmed by independent investigation consisting of surveillances, analysis of telephone toll calls and other investigative techniques." These recitals are sufficient to show the trustworthiness of the informants and to justify reliance on their statements. United States v. Sultan, 463 F.2d 1066, 1068-1069 (2 Cir. 1972); United States v. Dunning, 425 F.2d 836, 839 (2 Cir. 1969), cert. denied, 397 U.S. 1002 (1970).

It is true, as the defendants point out, that Agent Connolly did not personally receive the information from the informants. Rather, each informant relayed information to a named police officer who, in turn, transmitted the information

to Agent Connolly. While the use of double hearsay in a wiretap application is not to be encouraged, it does not automatically render the affidavit fatally defective. United States v. Fiorella, 468 F.2d 688, 691-692 (2 Cir. 1972). The test to be applied is whether the information furnished by each informant, taken in the light of the totality of the circumstances, can reasonably be said to be reliable. Id. Here, as stated, the informants had previously given accurate information to the police. In addition, the informants with considerable detail related their personal observations of and contacts with the defendants and extensively described admissions of criminal activity by the defendants. The separate accounts of the three informants tend to corroborate each other and independent investigations by local police and federal agents confirmed several material aspects of the informants' reports. Under these circumstances, the affidavit must be deemed sufficient to support a finding of probable cause for the wiretap order. See United States v. Harris, 403 U.S. 573 (1971); Aguilar v. Texas, supra; Jones v. United States, 362 U.S. 257 (1960); United States v. Welebir, 498 F.2d 346 (4 Cir. 1974); United States v. Fiorella, supra; United States v. Speed, 465 F.2d 1310 (9 Cir.), cert. denied, 409 U.S. 1078 (1972); United States v. Sultan, supra; United States v. Fantuzzi, 463 F.2d 683 (2 Cir. 1972); United States ex rel. Cardillo v. Gonzalez, 446 F.2d 532 (2 Cir. 1971).

ii. The defendants next argue that the wiretap

application did not include the requisite "full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(1)(c). See also 18 U.S.C. § 2518(3)(c). In support of their position, the defendants cite the conclusory language contained in paragraph 3(d) of the affidavit which merely asserts that normal investigative techniques such as physical surveillance and examination of records have failed to uncover sufficient evidence to sustain a prosecution; and, therefore, "the interception of these telephone communications is the only available method of investigation which has a reasonable likelihood of securing the evidence necessary to prove violations of Title 18, United States Code, Sections 1955 and 371."

This argument overlooks the factual explanation on pages 11 and 12 of the affidavit concerning the difficulties in employing conventional investigative techniques to the present case. Paragraph 10 of the affidavit reads:

My experience and the experience of other agents of the Federal Bureau of Investigation have shown that even though gambling customers are identified they are unwilling to furnish information to law enforcement agents or officials inquiring into gambling activities. This is even more true when the customer is a professional gambler himself. Moreover, interviews and/or Grand Jury subpoenas

would only serve to put these individuals on notice of pending investigation and severely reduce the potential success of the investigation. Experience has shown that raids and searches of individuals operating a policy book have not in the past resulted in gathering sufficient physical or other evidence to prove all elements of the offenses particularly when individuals involved in the operation do not physically engage in the action of operating the policy action but control and receive proceeds of the operation. Even when records are maintained these records are frequently destroyed immediately prior to a physical search of the premises and usually records which are obtained are coded in order to protect the names of controllers and runners.

The informants mentioned in this affidavit have informed agents of the Federal Bureau of Investigation and officers of the New Haven Police Department that they categorically refuse to testify in any court proceedings because of possible retaliatory tactics which might be taken against them.

A similar statement was found to be in substantial compliance with the mandates of §§ 2512(1)(c) and (3)(c) in United States v. Ashing, 351 F. Supp. 400, 414 (D.Md. 1972). Further, a comparison of the averments in the Connolly affidavit with narratives upheld in other controlling cases indicates that the defendants' contentions must be rejected. See United States v. Steinberg, ____ F.2d ____ (2 Cir. November 12, 1975); United States v. Falcone, 364 F. Supp. 377, 382 (D.N.J. 1973), aff'd 505 F.2d 472 (3 Cir. 1974), cert denied, 420 U.S. 955 (1975); United States v. Staino, 350 F. Supp. 352 356-357 (F.D.N.Y. 1973); United States v. Longo, 355 F. Supp. 27, 30 (S.D.Fla. 1973); United States v.

Mainello, 345 F. Supp. 363, 373-374 (E.D.N.Y. 1972).

C. In their third ground for suppression, the defendants assail the government's compliance with the requirements for the submission of progress reports and the return and sealing of the wiretaps. On January 15, 1973, Judge Thomas F. Murphy issued the original wiretap order with a termination date of January 30, 1973. Under the provisions of 18 U.S.C. § 2518(3)(a), the government was obligated to return the recordings and to submit a progress report to Judge Murphy upon the expiration period of the order. On January 29, 1973, the government attempted to comply with the statute but Judge Murphy was not in his chambers. Thereupon, the agents requested Chief Judge T. Emmet Clarie to accept the progress report and the recordings for sealing. Judge Clarie contacted Judge Murphy by telephone and it was "agreed orally that the Court sitting here in Hartford should receive this progress report as of today and should also accept the return of the government as of today and seal the original tapes as submitted to the Court." Transcript of Hearing, January 29, 1973, pp. 7-8. Two days later, Judge Murphy entered an order ratifying the actions taken by Judge Clarie.

Under these circumstances there is no merit to the defendants' claim that the wiretap evidence must be suppressed because the return of the progress report and the recordings was accepted by Judge Clarie rather than Judge Murphy. Since Judge Murphy was unavailable, it was

proper for the government to seek the assistance of Judge Clarie in order to file a timely return under 2518(3)(a). Cf. United States v. Poeta, 455 F.2d 117, 122 (2 Cir.), cert. denied, 406 U.S. 948 (1972). In any event, even assuming a procedural error, suppression would be inappropriate. The integrity of the tapes is not questioned and the defendants have failed to demonstrate any prejudice from the purported violation of the statute. Cf. United States v. Chavez, 416 U.S. 562, 574-575 (1974); United States v. Falcone, supra; United States v. Iannelli, 477 F.2d 999, 1002 (3 Cir. 1973); United States v. Poeta, supra; United States v. LaGorja, 336 F. Supp. 190, 194 (U.D.Pa. 1971).

D. The defendants further contend they were not served with timely inventories in violation of 18 U.S.C. § 2518(3)(d). That statute requires that, within a reasonable time but not later than 90 days after the termination of the period of the wiretap order "or extensions thereof", the judge who issued the warrant shall cause an inventory notice to be served on each person named in the order and, in the discretion of the judge, on any other person whose conversation was intercepted.

Here the original wiretap order, naming defendants Valeriano, Brown and Furman, was issued by Judge Murphy on January 15, 1973, with a termination date on or before January 30, 1973. Thus, these defendants argue, the inventories should have been served on or before April 30, 1973. However, on April 25, 1973, in Judge Murphy's absence,

Judge Newman authorized an extension of the original order and the service of the inventories until May 25, 1973. Three days prior to the termination date, Judge Murphy granted a further extension of the order and set July 16, 1973 as the final date for the service of the inventories. The government served the notice inventories on these defendants on July 10, 1973.

Despite defendants' contentions, it seems clear that the government complied with the provisions of § 2518(8)(d). The statute specifically allows postponement of the service of notice as a result of extensions of the original wiretap order. Since the defendants received the notice inventories prior to the deadline date of July 16, 1973, the government was in full compliance with Judge Murphy's May 22, 1973 order. Cf. United States v. Currevi, 363 F. Supp. 430, 435-436 (D.Md. 1973). See also United States v. Valeriano, Magistrate's Decree No. 2 (E. Conn. November 20, 1973) (Newman, J.).

E. Defendants Hirsler, Bell, Amendola, and Adams, who were named in the application and order but whose conversations were overheard during the interceptions, also argue non-compliance with § 2518(8)(d). The government concedes that these defendants did not receive full disclosure of all relevant documents and materials until July 3, 1974, two months after the indictment in this case was returned by a grand jury. However, it excuses the delay in service on the ground that these defendants were "unknown"

at the time the wiretap application and order were filed and that, as soon as their identities were confirmed by investigative techniques, they received notice within a reasonable time.

The record before the Court supports the government's position. No evidence has been presented to indicate that defendants Kinsler, Bell, Amendola, and Adams were known to the government, within the meaning of Title III of the Act, so as to require disclosure of their names at the time the wiretap orders were issued and extended by judges of this District during the first six months of 1973. In fact, as late as February 27, 1974, Agent Connolly informed the grand jury investigating this case that the government was awaiting the results of voice exemplars to establish the identities of certain persons suspected of being overheard, and specifically included these defendants within that category. Subsequently, Agent Connolly reported to the grand jury that the voice tests had been concluded and identifications made. Thereupon an indictment was returned on May 3, 1974. Under these circumstances, since probable cause concerning these defendants may properly be found to be lacking until the spring of 1974, the government was not derelict in failing to reveal their names to the judges who issued and extended the wiretap orders and who established dates for the service of notice inventories. See United States v. Kahn, 415 U.S. 143, 155 (1974); United States v. Martinez, 488 F.2d 464, 468 (5 Cir. 1974); United States v.

Tortorello, 489 F.2d 754, 775 (2 Cir.), cert. denied, 414 U.S. 655 (1973); United States v. Frizell, 400 F. Supp. 258, 271-272 (E.D.Tenn. 1975); United States v. Chiarizio, supra, 388 F. Supp. at 867-872.

In any event, even assuming these defendants failed to receive timely inventories, suppression of the evidence would be unwarranted. Not every failure to comply fully with the requirements of Title III renders the interception unlawful. United States v. Chavez, supra. Unlike the statutory requirement concerning authorization for a wiretap, see United States v. Giordano, 416 U.S. 505 (1974), it does not appear that a post-interception inventory is a central or functional safeguard under Title III which, if tardily furnished, mandates suppression. One of the main purposes of the inventory procedure is to provide notice to those who have had their communications intercepted and to afford any aggrieved person the opportunity to pursue an appropriate remedy. Therefore, in the absence of a showing of prejudice, a failure to serve a timely notice does not require suppression. United States v. Rinzo, 492 F.2d 443, 447 (2 Cir.), cert. denied, 417 U.S. 944 (1974); United States v. Wolk, 456 F.2d 1143 (3 Cir. 1972); United States v. Forlano, 358 F. Supp. 56, 59 (S.D.N.Y. 1973). No prejudice has been demonstrated in the instant case. All relevant information, including a complete transcript of the intercepted conversations, has been made available to the defendants for the

purposes of pre-trial motions and defenses at trial. Cf. United States v. Cirillo, 499 F.2d 372, 382-383 (2 Cir.), cert. denied, 419 U.S. 1056 (1974). Moreover, there has been no showing that the government deliberately ignored the notice requirements of the statute or that it failed to file inventories in order to gain a tactical advantage. Compare United States v. Eastman, 465 F.2d 1057 (3 Cir. 1972). To suppress the wiretap evidence under these circumstances "would be to unnecessarily undermine and subvert the legislation." United States v. LaGorga, supra, 336 F. Supp. at 124. See also United States v. Doolittle, 518 F.2d 500, aff'g 507 F.2d 1368, 1371-1372 (5 Cir. 1975).

F. Defendant Bell moves to suppress items seized in a search of his premises located at 23 West Street, New London, Connecticut, on the ground that the warrant was issued without probable cause for two reasons: (1) the informant named in the affidavit was not demonstrated to be "reliable"; and (2) the information obtained from the informant was "stale." The contentions are without merit. The affidavit not only contained a statement that the informant had previously supplied accurate information but also certified to independent corroboration of the informant's story. These factors are sufficient to sustain the constitutional propriety of the issuance of the warrant. Aguliar v. Texas, supra, 378 U.S. at 114; United States v. Sultan, supra, 463 F.2d at 1068-1069; United States v. Dunning, supra, 425 F.2d at 639. Moreover, the underlying circumstances set

forth in the affidavit did not suffer from staleness. The affidavit detailed the on-going, illegal business relationship between defendant Bell and defendant Valeriano, and described the doings of the criminal enterprise just a few days before the search. While it is true that probable cause dwindles with the passage of time when the affidavit refers to an isolated violation, the time element becomes less significant "where the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct. . . ." United States v. Johnson, 461 F.2d 285, 287 (10 Cir. 1972); see also United States v. Harris, 482 F.2d 1115, 1119 (3 Cir. 1973); United States v. Cantor, 328 F. Supp. 561, 568 (E.D.Pa. 1971), *aff'd*, 470 F.2d 820 (3 Cir. 1972). Viewed in its entirety, the affidavit was sufficient to support the issuance of the search warrant.

G. Defendant Brown moves to suppress her testimony before the grand jury on October 10, 1973, claiming that at the time she was not fully apprised of her rights as required by Miranda v. Arizona, 384 U.S. 436 (1965) and its progeny. Since the government represents that none of the defendants' testimony before the grand jury will be used at trial, the motion is denied, without prejudice.

III. The Discovery Motions

A. With the exception of defendant Valeriano, all the defendants move for the disclosure of the minutes of the grand jury. Since the defendants have demonstrated no

"particularized need", the motions are denied. Rule 6(e), F. R. Crim. P., United States v. Procter & Gamble Co., 356 U.S. 677, 683 (1958); United States v. Budzanoski, 462 F.2d 443, 454 (3 Cir. 1972); cf. United States v. Youngblood, 379 F.2d 355 (2 Cir. 1967). In addition, the defendants' request for an in camera inspection of the grand jury minutes is denied, absent a showing that their Estepa claim possesses any substance. United States v. Ramirez, 462 F.2d 807, 812 (2 Cir.), cert. denied, 414 U.S. 1070 (1973).

B. The defendants' motions for bills of particulars are denied, except that the government shall answer the following requests:

Paragraph No. 7 under Count One;

Paragraphs Nos. 7 and 9 under Count Two;

Nos. 3 and 6 under Overt Acts.

C. The defendant Kinsler's supplemental motion for discovery and inspection is denied; the defendant's argument concerning the authority of the special strike force attorney to appear and present evidence in this case to the grand jury is foreclosed by the ruling of the Second Circuit in In re Subpoena of Lescio, 522 F.2d 41 (2 Cir. 1975).

Accordingly, it is ordered as follows:

1. All motions to dismiss are denied.
2. All motions to suppress are denied.
3. The motions for disclosure of grand jury minutes are denied.

4. All motions for discovery and inspection are denied.

5. The motions for bills of particulars are denied, with the exceptions noted hereinbefore.

Dated at New Haven, Connecticut, this 12th day of February, 1976.

Robert C. Zamparo
United States District Judge

Cippency X

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----x
:
UNITED STATES OF AMERICA,
:
vs.
:
DANIEL VALERIANO, et al.,
:
Defendants.
:
-----x

Criminal N-74-48

July 22, 1976
New Haven, Connecticut

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

And a Jury of Twelve

A p p e a r a n c e s:

PETER CASEY, Esq.
Assistant U. S. Attorney
Hartford, Connecticut

For the Defendants:

ANTHONY J. LASALA, Esq.
33 Whitney Avenue
New Haven, Connecticut

ROGER A. FRIEDMAN, Esq.
115 Church Street
New Haven, Connecticut

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U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

would serve no purpose.

For the record, since 1973, I have been involved in this case and I have paid attention to all the discovery and virtually the piles and piles of motions and papers that have been filed, and your Honor's reference to an untimely attack, I can state unequivocally that through all the motions and all the responses thereto, and all the disclosures, the government has taken the position that there were two separate orders: one for interception and one for pen register, and I would state it was not until the events of yesterday that I was aware that there was a pen register on my client's phone from the 17th to the 27th, so, consequently, I don't feel that it was an untimely motion on my part, because I had no knowledge before that was the case, based upon what the government put forth in its disclosure.

THE COURT: This has been practically an open file case and I cannot and will not accept that explanation. Judge Murphy's order was certainly available. The logs, the tapes and the various other materials were available to counsel, and it's up to counsel for the defendant to prepare its case -- their case thoroughly and not rely on what might have been assumed.

But, in any event, your comments are noted for the record and will be available in another forum to weigh, but I, as the trial judge, just cannot accept that explanation.

MR. PROFFER: Would your Honor be kind enough to note the same comment by me? The first time I ever heard of this

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----x
:
UNITED STATES OF AMERICA,
:
vs.
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DANIEL VALERIANO, et al.,
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Defendants.
:
-----x

Criminal N-74-48

July 20, 1976
New Haven, Connecticut

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

And a Jury of Twelve

A p p e a r a n c e s:

PETER CASEY, Esq.
Assistant U. S. Attorney
Hartford, Connecticut

For the Defendants:

ANTHONY J. LaSALA, Esq.
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ROGER J. FRECHETTE, Esq.
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New Haven, Connecticut

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HARTFORD, CONNECTICUT

Daly - direct

Q Now, is it part of your duties, sir, to respond on behalf of the Southern New England Telephone Company to subpoenas requiring information?

A Yes.

Q That's part of your official duties?

A Yes.

Q Have you received, sir, a subpoena calling for certain information to be brought to this courtroom today?

A Yes.

Q Do you have a copy of your subpoena with you?

A Yes.

Q I will be referring to it. Does the subpoena that you received, sir, request the information concerning the subscriber records, billings, repair orders, telephone directories or correspondence reflecting the subscribers to and locations of a telephone 624-8802?

A Yes.

Q Have you brought such information with you today, sir?

A Yes.

Q Please pull it out. That information, sir, was from -- January 1st, 1973 through August 1st, 1973, is that correct?

MR. FREEMAN: I object. I thought he said he was there seven months. I may be incorrect.

MR. LASALA: He said five months. He said he had been

Daly - direct

objection.

MR. LASALA: I would state further my objection that Count Two of the indictment sets out specific dates running from January 15 of 1973 to January 27 of 1973. Those are the dates that we are concerned with.

MR. CASEY: Those are simply overt acts, your Honor.

THE COURT: Objection is overruled.

Q Do you recall my question, sir?

A Can you repeat it, please?

THE COURT: Rephrase it.

Q Did the subpoena that you received, sir, call for you to bring in to this court what are known as toll call records for telephone number 624-8802, from December 17, 1972 to February 13, 1973?

A Yes.

Q Can you tell me, sir, if you have brought those records with you?

A Yes, these are the records. These are the toll records.

Q What is in front of you marked as Government Exhibit 1 also are the toll records that were requested, is that correct?

A Yes.

Q And what is the time frame of those toll records?

A From 12/17/72 to -- through 2/13/73.

Daly - direct

Q By way of explanation, sir, can you please tell us what a toll record is?

A A toll record is a record of the toll billed above and beyond the normal service.

Q Do the records in front of you, sir, reflect the subscriber to telephone number 624-8802?

A Yes.

Q Who is that, sir?

A Subscriber is Mr. D. Valeriano.

Q Is there an address?

A 58 Dixwell Avenue, New Haven, Connecticut.

Q Drawing your attention to the subpoena, were you requested, sir, to bring in subscriber information relating to telephone number 865-5288?

A Yes.

Q Have you brought such records with you today?

A Yes.

Q Are the records that you have brought with you records kept in the normal course of business by the Southern New England Telephone Company?

A Yes.

Q Do those records reflect telephone numbers?

A Yes, they do.

Q What telephone numbers do they reflect?

Daly - direct

to your subpoena, sir, does your subpoena request subscriber --
again, subscriber -- information for telephone number 203 --
I'm sorry, that's the area code -- 443-8505 -- I'm sorry, your
Honor, I'm in error -- for telephone number 248-2088?

A. Yes, it does.

Q. Have you brought such records with you today, sir?

A. Yes.

THE COURT: What is the number? 248 --

MR. CASEY: 248-2088, your Honor.

A. Yes.

Q. The records that -- are these the records that you
brought with you indicating such subscriber information?

A. Yes.

THE CLERK: Government 3 for Identification, your
Honor.

Q. Could you please -- showing you what has been marked
for identification as Government 3, could you please tell us
what those documents are, sir?

A. They are the billing records.

Q. For what telephone number?

A. For 248-2088.

Q. Are those records kept in the normal course of business
of the Southern New England Telephone Company?

A. Yes.

Daly - direct

not prove true, then an appropriate motion should be made.

Exhibit 4 for Identification now becomes a full exhibit.

(Government Exhibit 4 was received in evidence.)

BY MR. CASEY:

Q Now, drawing your attention to the subpoena that you received, did the subpoena require you to bring with you all installation, binding post, appearance and lease line information and data for telephone number 624-8802?

A Yes.

Q Have you brought such records with you today?

A Yes.

MR. LASALA: I take it these are records that were not destroyed, then, because when I asked earlier in the direct examination --

THE COURT: Don't make a speech. You can ask the witness questions you want on voir dire.

Q Showing you what has been marked as Government Exhibit 5 for Identification, does that document reflect the installation, binding post, appearance and lease line information for telephone number 624-8802 for the month of January, 1973?

A Yes.

Q Was that information -- without going into what information is contained on that record -- was that information given by the Southern New England Telephone Company to the

Daly - direct

information?

A. Yes.

Q. What does the term "lease line" connote?

A. A lease line is a pair of wires leased by somebody for their use.

Q. Does the document indicate that there was a lease line relating to that telephone number?

A. Yes.

Q. Does it indicate the termination of the lease line, the site of the termination of the lease line?

A. Yes.

Q. What is that?

A. Pole 3163, Lake Place, opposite 73 Lake Place.

Q. Then, where does the lease line go to? Does the document indicate that?

A. To 770 Chapel Street, fourth floor, FBI office.

Q. Now, were you requested, sir, to bring the same type of information as it related to telephone number 865-5286?

MR. LASALA: If your Honor please, this witness was not requested to bring anything. I say this at the risk of irritating the Court on this matter, but --

THE COURT: Don't fear irritating me. You are in perfect humor this afternoon. You can't argue me. If you have an objection, make it.

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Daly - direct

MR. LASALA: This man has had a ball passed to him. He is not under subpoena, and it's unfortunate that --

THE COURT: That goes to weight rather than admissibility.

In response to the subpoena, were you directed to bring the record with you?

THE WITNESS: Yes.

Q Have you brought such information with you, sir?

A Yes.

Q I am handing you back what has been marked for identification as Government Exhibit 6. That is the same type of document, is it not, that was previously introduced as Government Exhibit 5?

A Yes.

Q Is that a record that is kept in the ordinary course of business by the Southern New England Telephone Company?

A Yes.

Q Is that document kept -- where is that document kept?

A In security office.

Q Do you recognize that as a document coming from the security office?

A Yes.

Q You are in the security office, are you not?

A Yes.

Daly - direct

a short recess. I will stay on the bench. The jury is excused for a short recess.

(Jury left courtroom at 3:40 p.m.)

THE COURT: In the Chiarizio case at 525 Fed. 2nd, 289, did you want to direct my attention to page 294 wherein the Court of Appeals, through Judge Smith, said: "The government presented witnesses who made voice identification from the stand"?

MR. CASEY: More specifically, your Honor, page 295, head notes 15 and 16.

THE COURT: Well, I will take a five-minute recess.

(Recess taken.)

THE COURT: Are the parties ready to proceed?

MR. CASEY: The government is ready.

THE COURT: Bring in the jury.

(Jury entered courtroom at 3:50 p.m.)

THE COURT: You may proceed.

DIRECT EXAMINATION CONTINUED

BY MR. CASEY:

Q Mr. Daly, directing your attention back to your subpoena, sir, the subpoena to the telephone company, does the subpoena request the dial post, appearance and lease line information and data for telephone number 246-2032 for the month of May, 1973?

A. No. Would you repeat the number again?

A. Yes. I have 248.

A. Right here.

A. Yes.

A. Yes.

A. Yes.

Q Is it a document that is prepared in response to court orders and the like?

Appendix ~~III~~ *etc*

III. Statement of time limits adopted by the Court and procedures for implementing them.

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HARTFORD, CONNECTICUT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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JUL 14 1976

U. S. ATTORNEY'S OFFICE
NEW HAVEN, CONNECTICUT

REVISED RULE 50(b) PLAN, EFFECTIVE JULY 1, 1976

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974, (18 U.S.C. Chapter 208), and the Federal Juvenile Delinquency Act 18 U.S.C., Sections 5036, 5037), the Judges of the United States District Court for the District of Connecticut have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings.

Throughout this Revised Rule 50(b) Plan (hereinafter Plan), the District of Connecticut has decided to adopt, effective July 1, 1976, the statutory time limits for July 1, 1979, mandated by the Speedy Trial Act of 1974. By accelerating the effective date of the 1979 time limits, it is hoped that problems in compliance will be identified and solved before sanctions are applicable. While we are adopting the 1979 time limits effective July 1, 1976, none of the sanctions encompassed in 18 U.S.C., Section 3162 will become effective until July 1, 1979, the deadline mandated by Congress.

Immediate application of the stringent 1979 time limits without sanctions will allow the planning group to monitor

more accurately potential difficulties in complying with the Speedy Trial Act by focusing upon the District's long-range problems now. It is hoped that the changes in the District's arraignment procedures established in Section 4 of this Plan will render the 30-day limit from arraignment to trial our only significant remaining compliance problem. Adopting the 1979 time limits immediately also will aid in assessing the effectiveness of changes made in this District's pre-trial discovery motions and trial scheduling practices as established in Section 5 of this Plan.

1. Applicability.

(a) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this Court, including cases triable by United States Magistrates, except for petty offenses as defined in 18 U.S.C., Section 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act.

(b) Persons. The time limits are applicable to persons accused by complaint who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

2. Priorities in Scheduling Criminal Cases.

(a) Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a)

of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial should be given preference over other criminal cases.

(b) The preference to be given criminal cases shall not be unduly prejudicial to the prompt disposition of civil litigation.

3. Time Within Which an Indictment or Information Must Be Filed.

(a) Time Limits. Any information or indictment charging an individual with the commission of an offense shall be filed within 30 days from the date on which such individual was arrested or served with a summons in connection with such charges.

(b) Measurement of Time Periods. If a person has not been arrested or served with a summons on a Federal charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

(c) Related Procedures.

(1) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information,

the judicial officer shall establish for the record the date on which the arrest took place.

(2) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

4. Time Within Which Arraignment Must Be Held.

(a) An arraignment shall be considered to take place at the time a plea is taken or entered in open court on the defendant's behalf. The full-time magistrates are authorized to conduct arraignments and to enter pleas of not guilty in all criminal cases. A defendant wishing to plead guilty or nolo contendere shall be referred promptly to the trial judge.

(b) Time Limits. A defendant shall be arraigned within 10 days of:

- 1) The filing of an indictment or information;
or
- 2) The date of the defendant's removal to this district; or
- 3) The date on which a sealed indictment or information is unsealed.

(c) Related Procedures.

(1) Upon the filing of an indictment or information, the clerk shall direct the defendant to appear before a judicial officer for arraignment at a stated time

and date within 7 days from the filing of the indictment or information. The summons shall be accompanied by written notice advising the defendant of his right to retain counsel or to have counsel appointed and recommending that he appear with counsel. The defendant shall be advised that arraignment may take place without counsel of his choice if he fails to appear with such counsel at the specified time and date.

(2) In the event of the issuance of a warrant, the judicial officer before whom the defendant is brought shall similarly schedule arraignment within 7 days, shall similarly advise the defendant of his right to counsel and recommend that he appear with counsel and shall similarly advise the defendant that the arraignment may take place without counsel of his choice if he fails to appear with such counsel at the specified time and date.

(3) At arraignment, the judicial officer shall take appropriate steps to assure that the defendant is represented by counsel and shall arrange to have counsel appointed where appropriate under the criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure. The judicial officer shall also inform the defendant of this District's Revised Rule 50(b) Plan.

(d) A defendant who signs a written consent to be tried before a magistrate shall, if no indictment of

A 66

information charging the offense has been filed, be deemed indicted on the date of such consent, provided that notice of such consent is given the government and approved by a judicial officer.

5. Time Within Which Trial Must Commence.

(a) Time Limits. The trial of a defendant shall commence within 60 days of the arraignment.

(b) Measurement of Time Periods. For purposes of this Rule (and not for purposes of considering Double Jeopardy claims):

1) An arraignment shall be deemed to take place as provided in Section 4(a).

2) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

3. A trial in a non-jury case shall be deemed to commence on the day the case is called when the judge orders that the case have an "on trial" status.

(c) Discovery and Related Procedures.

(1) At the time of arraignment, the judicial officer shall advise the defendant and his counsel of the Court's Local Rules 4 and 5 for Discovery and Bill of Particulars, adopted in conjunction with this Plan, and the government shall supply the defense all matters described in Local Rule 4(A)(1) and (2). Defendant's request for matters available under Local Rule 4(A)(3)-(7)

shall be made within 7 days following arraignment, and all such matters shall be supplied to the defendant, or objected to, by the government within 7 days from defendant's request. Matters the government may request under Local Rule 4(B) similarly shall be supplied, or objected to, within 7 days of such request, which shall be made during the period allowed the government to comply with defendant's request. Compliance with Local Rule 4 shall be certified in writing to the Court within 21 days following arraignment. This Court shall refuse to hear any and all motions under Local Rule 4 unless counsel shall include in their certification a written representation that, after sincere efforts to resolve their differences, they are unable to reach an accord. Such certification shall include the date, time and place of such conference and the names of all parties participating therein. Defendant's request for a Bill of Particulars under Local Rule 5 shall be made within 7 days of arraignment, and the Government shall comply within 7 days unless it files specific objection to such request. The defendant may attack the sufficiency of the indictment as made more particular by the Bill of Particulars within 14 days of receipt of such Bill of Particulars.

(2) All motions which may be made prior to trial shall be filed within 14 days of the arraignment, except

that motions seeking discovery or involving matters disclosed during discovery shall be filed within 28 days of the arraignment.

(d) Setting and Trial Date. The trial judge shall have sole responsibility for setting cases for trial. The trial date shall be set within the 60-day limit following arraignment.

(1) Conflicts in schedules of counsel will not be grounds for a continuance or delayed setting of the trial date except under circumstances approved by the Court and called to the Court's attention at the earliest practicable time. The United States Attorney will assign or re-assign cases in such a manner that the government will be able to announce its readiness for trial. The government must be ready within 60 days of arraignment, excluding time excluded under the Speedy Trial Act.

(e) Retrial. The retrial of a defendant shall commence within 60 days from the date the order occasioning the retrial becomes final. If the retrial follows an appeal or collateral attack, the Court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within 60 days impractical. The extended period shall not exceed 180 days. (Section 3161(e)).

(f) Withdrawal of Plea. If a defendant enters

a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the arraignment with respect to the entire indictment or information shall be deemed to have been held on the day the order permitting withdrawal of the plea becomes final. (Section 3161(i)).

(g) Superseding Charges.

1) At the time of the filing of a complaint, indictment or information against a defendant charged in a pending indictment or information or an indictment or information dismissed on motion of the United States Attorney, the United States Attorney shall give written notice to the Court if the new charge is not for the same offense charged in the original indictment or information or offense required to be joined therewith.

2) If the original indictment or information was dismissed upon motion of the defendant, or any charge contained in a complaint against an individual was similarly dismissed or otherwise dropped, and thereafter an indictment, information or complaint is filed charging the same person with the same offense or an offense based on the same conduct or arising from the same criminal episode, the time limit shall be determined without regard to the existence of the original charge. (Section 3161(d)).

3) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information.

4) If the original indictment or information was dismissed upon motion of the United States Attorney before the filing of the subsequent charge against the same defendant for the same offense, or any offense required to be joined with that offense, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge. (Section 3161(h)(6)).

5) In cases in which paragraph (3) or (4) applies but no arraignment is held on the original indictment or information, the time limit for commencement of trial shall be computed as if such arraignment had been held on the last permissible day, determined under Section 4(a).

6) The time within which an indictment or

information must be obtained on a subsequent charge, or within which an arraignment must be held on such charge, shall be determined without regard to the existence of the original indictment or information.

(h) Pre-trial Hearings. All pre-trial hearings or motions shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matter on the Court's criminal docket.

6. Defendants in Custody.

(a) Time Limits. Notwithstanding any longer time periods that may be permitted under Sections 3, 4, and 5, the following time limits will also be applicable to defendants in custody as herein defined:

1) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody in connection with such charge.

(b) Measurement of Time Periods. For the purpose of this section:

1) When a defendant is apprehended and held in custody outside this District, custody for the sole purpose of trial shall be deemed to begin (i) in proceedings under Rule 40(b) of the Federal Rules of Criminal Procedure, upon the finding and recommendation or order by the Magistrate or Judge that a warrant of

removal shall issue or upon the defendant's arrest pursuant to a warrant issued on an indictment or information filed in this District, and (ii) in cases initially processed under Rule 20, at such time as the defendant rejects disposition under Rule 20.

2) When a defendant is apprehended outside this District and is released pursuant to the provisions of Chapter 207 of 18 U.S.C., the times set out above shall begin to run when the defendant returns to this District and appears before a judicial officer.

3) A trial shall be deemed to commence as provided in Sections 5(b)(2) and 5(b)(3).

(c) Related Procedures.

1) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the Court at the earliest practicable time of the date of beginning of such custody.

7. Time Within Which Defendant Should Be Sentenced.

This section of the Plan is a Court guideline not mandated by the Speedy Trial Act:

(a) Time Limit. The trial judge shall set a sentencing date at the time of conviction or pleas of guilty or nolo contendere. A defendant ordinarily shall be sentenced no later than 30 days after his conviction or plea of guilty or nolo contendere.

(b) Related Procedures.

1) The date of sentencing may be postponed only under circumstances approved by the Court and called to the Court's attention at the earliest practicable time.

2) If the defendant and his counsel consent thereto, a pre-sentence investigation may be commenced prior to a plea of guilty or nolo contendere.

8. Juvenile Proceedings.

(a) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C., Section 5036.

(b) Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C., Section 5037(c).

9. Exclusion of Time From Computations.

(a) Applicability. In computing any time limit under Section 3, 4, 5, or 6, the periods of delay set forth in 18 U.S.C., Section 3161(h) shall be excluded.

(b) Records of Excludable Time. The Clerk of the Court shall enter on the docket, in the form

prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the Clerk by the United States Attorney. The docket entries made pursuant to this paragraph are for administrative purposes only, except as provided by this section or by order of the Court.

(c) Stipulations.

1) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

2) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C., Section 3161(h)(7), whether time has run against the defendant entering into the stipulation.

3) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the

stipulation shall have no effect unless approved by the Court.

(d) Pre-Indictment Procedures.

1) In the event that either party seeks a continuance under 18 U.S.C., Section 3161(h)(8), such party shall file a written motion with the Court. The motion shall state (i) whether or not the defendant is being held in custody on the basis of the complaint, (ii) the period of time proposed for exclusion, and (iii) the basis of the proposed exclusion. In appropriate circumstances, such motion may include a request that some or all of the supporting material be considered ex parte and in camera.

2) The Court may grant a continuance under 18 U.S.C., Section 3161(a)(3) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts

(e) Post-Indictment Procedures.

1) In the event that the Court continues an arraignment or trial beyond the time limits set forth in Section 4 and 5, the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C., Section 3161(h). In the absence of a need for a continuance, the Court will not ordinarily rule on the excludability of any period of time.

2) If it is determined that a continuance is justified, the Court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C., Section 3161(h)(8), the Court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(a) Defendants in Custody. A defendant in custody solely for trial whose trial has not commenced within the time limit set forth in 18 U.S.C., Section 3164(b) shall, if the failure to commence trial was through no fault of the defendant or his counsel, be released subject to such conditions as the Court may impose in accordance with 18 U.S.C., Section 3146. Nothing herein shall require that a defendant in custody be released except as required by 18 U.S.C., Section 3164(c).

(b) Government Not Ready for Trial Within 60 Days. If the United States Attorney is not ready for trial within 60 days from the arraignment, and if the defendant is charged only with non-capital offenses, the defendant may move in writing, on at least 10 days notice to the government, for dismissal of the indictment. Any such motion shall be decided with the utmost promptness. The Court's order dismissing the indictment shall be with prejudice unless the Court finds that the Government's neglect is excusable, in which event the dismissal shall not be effective if the government is ready to proceed to trial within 10 days. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this paragraph.

Computation of the 60 days shall not include time

excludable under the Speedy Trial Act.

(c) Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C., Section 5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.

(d) Dismissal Not Required. Except as required by paragraphs (a), (b), and (c) of this section, failure to comply with the time limits prescribed in this Plan shall not require dismissal of the prosecution. The Court retains the power to dismiss a case for unnecessary delay pursuant to Rule 48(b) of the Federal Rules of Criminal Procedure.

11. Persons Serving Terms of Imprisonment.

If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C., Section 3161(j).

12. Monitoring Compliance With Time Limits.

(a) Responsibilities of District Planning Group.

As part of its continuing study of the administration of criminal justice in this District, the District Planning Group will pay special attention to those cases in which there is a failure to comply with the time limits set forth herein. From time to time, the group may make appropriate recommendations to prevent repetition of failures.

(b) Responsibilities of Clerk. In addition to maintaining such statistical data as is required to be maintained by the Administrative Office of the United States Courts, the Clerk will report monthly to the other members of the planning group and the Judicial Council, each case in which there is a failure to comply with any time limit set forth herein. In addition, the clerk shall have the responsibility for establishing the case monitoring system. To discharge the responsibility, the Clerk is authorized to require such record keeping by the United States Attorney's office or other members of the planning group as may be necessary.

(c) Responsibilities of United States Attorney.

The United States Attorney shall, within 5 days after the close of the reporting period, furnish the Court with a biweekly report of persons in custody and note thereon those defendants whose custody will extend beyond the time limit specified in Section 6(a)(1) before the

filing of the next biweekly report. The Marshal shall provide such assistance as may be necessary in the preparation of the report. The report shall indicate the judge to whom each case has been assigned. The "Reason for Detention" column shall include an explanation in any case for which the defendant's status appears to be inconsistent with the time limits set forth herein.

13. Effective Date.

Upon approval of the reviewing panel designated in accordance with 18 U.S.C. Section 3165(c) and Rule 50(b) of the Federal Rules of Criminal Procedure, the time limits and procedures set forth herein shall become effective July 1, 1976, and shall supersede those previously in effect.